

ORIGINAL

RECEIVED

JUL 18 1997

CC 97-166

CHICAGO OFFICE  
ONE IBM PLAZA  
CHICAGO, ILLINOIS 60611  
(312) 222-9350  
(312) 527-0484 FAX

LAW OFFICES  
**JENNER & BLOCK**

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

601 THIRTEENTH STREET, N.W.  
SUITE 1200  
WASHINGTON, D.C. 20005

(202) 639-6000  
(202) 639-6066 FAX

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY  
LAKE FOREST OFFICE  
ONE WESTMINSTER PLACE  
LAKE FOREST, IL 60045  
(847) 295-9200  
(847) 295-7810 FAX

DOCKET FILE COPY ORIGINAL

DONALD B. VERRILLI, JR.

July 18, 1997

William F. Caton, Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

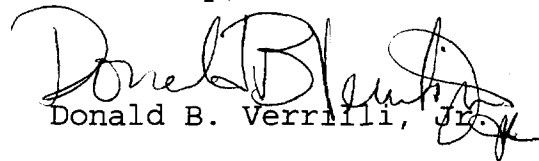
Re: In the matter of Petition of MCI for

Dear Mr. Caton:

Enclosed for filing please find an original and four copies of the Petition of MCI for Preemption Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996. Also enclosed is an extra copy to be file-stamped and returned.

If you have any questions, please do not hesitate to contact me.

Sincerely,

  
Donald B. Verrilli, Jr.

97-166

**RECEIVED**

JUL 18 1997

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

DOCKET FILE COPY ORIGINAL

In the Matter of )  
)  
Petition of MCI for )  
Preemption Pursuant )  
to Section 252(e)(5) )  
of the Telecommunications )  
Act of 1996 )

**PETITION OF MCI FOR PREEMPTION PURSUANT TO SECTION 252(e)(5)**

Lisa B. Smith  
Kecia Boney  
MCI Telecommunications Corp.  
1801 Pennsylvania Ave., N.W.  
Washington, D.C. 20006  
202-887-2992

Donald B. Verrilli, Jr.  
Maureen F. Del Duca  
Jodie L. Kelley  
Douglas H. Hsiao  
Michelle B. Goodman  
JENNER & BLOCK  
601 13th Street, N.W.  
Washington, D.C. 20005  
202-639-6000

July 18, 1997

---

## EXECUTIVE SUMMARY

MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. (collectively "MCI") respectfully submit this petition pursuant to 47 U.S.C. § 252(e)(5) and 47 C.F.R § 51.801-805 seeking preemption of the jurisdiction of the Missouri Public Service Commission ("MPSC") over the proceeding involving MCI's effort to arbitrate an interconnection agreement with Southwestern Bell Telephone Company ("SWB").

Although more than 16 months have passed since MCI requested interconnection from SWB, and more than 7 months have passed since the MPSC purported to complete an arbitration proceeding between MCI and SWB under § 252 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 et seq. ("1996 Act" or "Act"), there is currently no prospect of a timely interconnection agreement between MCI and SWB in Missouri. This impasse has occurred because the MPSC has refused to arbitrate all the issues presented to it, and has instead forced MCI to seek to renegotiate a host of unresolved issues after the MPSC issued its arbitration award without any definite deadline by which these renegotiations must end.

Because incumbent monopolists have no incentive to agree voluntarily to terms that would enable potential rivals to take away their customers, the state commission's role as arbitrator under § 252 of the Act is absolutely critical to the success of Congress's plan to introduce rapidly effective competition into the local telephone market. Under § 252, the state commission's responsibility extends not just to resolving generalized legal and policy disputes, but to resolving disputes over the specific terms and conditions of interconnection, access to unbundled elements, and resale in a way that results in an actual working interconnection

agreement.

In this proceeding, the MPSC has refused to resolve a substantial number of issues set forth in MCI's Arbitration Petition within the nine month statutory period and has failed to produce a functioning interconnection agreement in a timely manner. § 252(b)(4)(C). As a result, MCI has no agreement in place and no immediate prospect of entering the local market in Missouri -- a result that is manifestly contrary to the clear intent of Congress.

The MPSC's failure to resolve each arbitrated issue is a clear failure to act within the meaning of § 252(e)(5) of the 1996 Act. Where a state commission has so failed to act, this Commission must preempt the state commission's jurisdiction and act in its stead.

## **TABLE OF CONTENTS**

	<b><u>Page</u></b>
INTRODUCTION . . . . .	1
DISCUSSION . . . . .	2
I. The Telecommunications Act of 1996 . . . . .	2
II. The Proceedings in Missouri . . . . .	6
III. This Commission Must Assume Jurisdiction Over These Proceedings Because The Missouri Public Service Commission Has Failed to Complete Its Statutory Duties in a Timely Manner . . . . .	15
REQUEST FOR RELIEF . . . . .	17

JUL 18 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**PETITION OF MCI FOR PREEMPTION PURSUANT TO SECTION 252(e)(5)**

MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. (collectively "MCI") respectfully submit this petition pursuant to 47 U.S.C. § 252(e)(5) and 47 C.F.R § 51.801-805. MCI requests that the Commission exercise its authority under § 252(e)(5) to preempt the jurisdiction of the Missouri Public Service Commission ("MPSC") over the proceeding involving MCI's effort to arbitrate an interconnection agreement with Southwestern Bell Telephone Company ("SWB"). MCI seeks this relief because it is now more than 16 months since MCI requested interconnection from SWB (and more than 7 months since the MPSC purported to conclude its arbitration proceeding), and there remains no prospect of a timely interconnection agreement between MCI and SWB in Missouri. MCI faces this situation because the MPSC has refused to arbitrate all the issues presented to it, and has instead forced MCI to seek to renegotiate a host of unresolved issues after the MPSC issued its arbitration award. To make matters

worse, the MPSC has consistently refused to impose any deadline on this second round of negotiations, thereby inviting SWB to engage in precisely the kind of obstructionism this Commission feared when it issued the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98 ("First Report and Order") last year. As a result of the MPSC's refusal to carry out its responsibilities under the Act, MCI has no immediate prospect of entering the local market in Missouri -- a result that is manifestly contrary to the clear intent of Congress.

## **DISCUSSION**

### **I. The Telecommunications Act of 1996.**

Congress enacted the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 et seq. ("1996 Act" or "Act"), to end the historical regime in which incumbent local telephone companies (such as SWB) monopolized the facilities and services through which consumers place and receive all local and long distance calls. To that end, the Act mandates a new competitive structure designed to introduce effective competition into these monopoly local telephone markets. The Act does so by preempting state and local barriers to market entry and requiring incumbents to provide new entrants into local telecommunications markets (such as MCI) with access to the incumbents' telephone networks and services on rates, terms, and conditions that are just, reasonable, and non-discriminatory.

To ensure that effective local competition is achieved as quickly as possible, Congress set forth in § 252 of the Act a procedural mechanism of strict deadlines to be followed by incumbents, new entrants, and state commissions in order to develop effective,

working interconnection agreements specifying the terms and conditions governing interconnection, access to network elements, resale and other issues that must be resolved to allow for competitive entry. Under this scheme, incumbents first are required to negotiate in good faith with new entrants. Recognizing that incumbent monopolists would have no incentive to agree voluntarily to terms that would enable potential rivals to take away their customers, Congress backed these negotiations with compulsory arbitration, which either party can invoke at least 135 days (but not more than 160 days) after the initial interconnection request. § 252(b).

The state commission's role as arbitrator is absolutely critical to the success of the Congressional plan. As this Commission explained:

Because the new entrant's objective is to obtain the services and access to unbundled facilities from the incumbent that the entrant needs to compete in the incumbent's market, the negotiation process contemplated by the 1996 Act bears little resemblance to a typical commercial negotiation. Indeed, the entrant has nothing that the incumbent needs to compete with the entrant, and has little to offer the incumbent in a negotiation. Consequently, the 1996 Act provides that, if the parties fail to reach agreement on all issues, either party may seek arbitration before a state commission. The state commission will arbitrate individual issues specified by the parties, or conceivably may be asked to arbitrate the entire agreement.

First Report and Order ¶ 134 (emphasis added).

The state commission's responsibility under § 252 involves much more than merely resolving generalized legal and policy disputes over access and interconnection. Section 252 specifically states that the state commission not only must resolve "any open issue" that the parties could not successfully negotiate, but also must "impos[e] appropriate conditions as required to implement subsection (c)" of § 252. § 252(b)(4)(C). Subsection (c) of § 252 requires that all "open issues" resolved through arbitration and that the



"conditions" imposed by the state commission "meet the requirements of Section 251, including the regulations prescribed by the Commission pursuant to Section 251." Section 251 in turn requires "just and reasonable" terms and conditions for all aspects of interconnection and leasing unbundled elements (§ 251(c)(2),(3)); mandates access "that is at least equal in quality to that provided by the [incumbent] to itself, or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection, (§ 251(c)(2)(C)); and encompasses a range of other requirements designed to make local competition possible. Thus, a state commission's responsibility under § 252 plainly extends to resolving disputes over the specific terms and conditions of interconnection, access to unbundled elements, and resale.

This Commission could not have been more clear in stating that state commissions conducting arbitrations under § 252 must impose "specific conditions they deem necessary to provide new entrants . . . with a meaningful opportunity to compete in local exchange markets." First Report and Order ¶ 141. Indeed, this Commission specifically contemplated that state commissions would have to define "specific terms and conditions governing access to unbundled elements, interconnection, and resale of services beyond the rules the [FCC] establishes . . ." First Report and Order ¶ 135 (emphasis added).

As the plain text of the 1996 Act and this Commission's implementing regulations show, the whole point of § 252 is to produce actual working interconnection agreements within the 1996 Act's 9-month deadline. Without such agreements, there is no prospect for local competition. Because incumbents have no incentive to forge agreements that will enable their competitors to enter local markets, state commissions -- through the

§ 252 arbitration process -- must produce actual approved agreements. An arbitration process that resolves only some of the issues presented for arbitration (and requires the parties to try again to negotiate the remainder) does not satisfy the requirements of § 252.

The same is true of an arbitration process that lacks a definitive, time-bound mechanism for translating general arbitration decisions into specific functioning agreements. Without such a mechanism, new entrants such as MCI will be left with generalized legal decisions that defer resolution of critical terms and conditions, and that do not permit competitive entry. Indeed, the absence of such a mechanism constitutes an open invitation to incumbents to engage in precisely the same foot-dragging and obstruction that made arbitration necessary in the first place. An incumbent can delay competition as effectively at this stage of the arbitration proceeding -- by refusing to agree to contract language on critical commercial terms and conditions -- as it could at the initial stage of the proceeding by refusing to agree to interconnection at all.

Thus, if a state commission fails to resolve all issues before it in arbitration and/or fails to provide for a definitive mechanism to translate general arbitration awards into functioning interconnection agreements, it must be deemed to have failed to carry out its responsibilities within the meaning of § 252(e)(5). If a state commission fails to perform its duties "in any proceeding or other matter under this section [252]" this Commission is required to act in the state commission's stead:

**COMMISSION TO ACT IF STATE WILL NOT ACT.** -- If a State commission fails to act to carry out its responsibility under this section in any proceeding or other matter under this section, then the Commission shall issue an order preempting the State commission's jurisdiction of that proceeding or matter . . . and shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State

commission.

§ 252(e)(5). This Commission has interpreted "failure to act" as meaning "a state's failure to complete its duties in a timely manner." FCC Order ¶ 1285.

As will be shown, the proceedings in Missouri were critically deficient in precisely these respects.

## **II. The Proceedings in Missouri.**

On March 26, 1996, MCI sent to SWB a request for interconnection pursuant to § 252 of the Act. Between March 1996, and August 1996, MCI attempted to initiate negotiations with SWB regarding interconnection, but SWB prevented these negotiations from commencing by refusing to agree to the appropriate terms and conditions for a preliminary non-disclosure agreement. Affidavit of Stephen F. Morris ("Morris Aff.") ¶ 3.

Unable even to begin substantive negotiations regarding interconnection, MCI timely filed a petition for compulsory arbitration of unresolved issues with the MPSC under § 252(b) on August 16, 1996. Morris Aff. ¶ 4. MCI attached to this petition a copy of its "MCI Requirements for Inter-carrier Agreements" (hereinafter MCI's "Term Sheet") and specifically stated that:

Because the very limited negotiations which occurred between MCI and SWB did not result in agreement on any substantive issues, the Term Sheet presents MCI's current position on all unresolved issues, as required by . . . Section 252(b)(2). MCI requests arbitration of these issues, as well as the nondisclosure agreement and business process issues.

Petition of MCI Telecommunications Corporation and Its Affiliates Including MCI Metro Access Transmission Services, Inc., for Arbitration and Request for Mediation Under the Federal Telecommunications Act of 1996 ("Arbitration Petition") at 10.

The MPSC held arbitration hearings in October 1996 during which MCI presented evidence regarding the issues identified in MCI's Arbitration Petition and Term Sheet, and entered into evidence at the hearings a copy of a proposed interconnection agreement which incorporated the terms and conditions MCI wanted with respect to those issues. Morris Aff. ¶ 5-6. The MPSC issued its Arbitration Order on December 11, 1996, just before the nine month deadline mandated by the Act. Although recognizing that the Arbitration Petition sought "the arbitration of virtually every detail," Arbitration Order at 47, the MPSC order left many disputed issues unresolved. As to those remaining disputed issues, the MPSC said only that "[t]he Commission has dedicated the necessary staff resources to hearing and resolving these issues and hereby encourages the parties to complete the process by negotiating their final agreements in compliance with this Arbitration Order." Arbitration Order at 47-48. In short, the Commission announced that MCI should resort once again to private negotiations to resolve a myriad of critical issues.

Specifically, the Commission failed to arbitrate numerous issues which are essential to forging a valid, binding contract. These issues (which were included in Part A of the draft contract submitted to the Missouri commission) include:

- the scope of the agreement (1.2)<sup>1</sup>
- the effect on the agreement of subsequent regulatory action (2.3)
- the term of the agreement (3)
- the effect on the agreement of subsequent alterations in Commission rules,

---

<sup>1</sup>Section designations in parenthesis refer to the corresponding proposed terms and conditions found in the draft contract submitted to the Missouri commission on June 16, 1996.

regulations, or other legal requirements (6.2)

- intellectual property rights and indemnification (10)
- other indemnification issues (11)
- limitations on liability (12)
- warranties relating to quality of service and nondiscriminatory access (13)
- remedies in the event of breach including performance credits (15)
- dispute resolution procedures (23)

The Commission likewise left unresolved myriad terms and conditions which are necessary to implement even those issues that it did resolve. An arbitration order that requires ILECs to sell local loops to potential competitors, but which does not order the ILEC to set up mechanisms for ordering the loop and does not establish any parameter for provisioning the loop is meaningless. It is no consolation to a potential competitor to know that in theory, it has the theoretical right to purchase a loop if there is no practical means available for it to do so.

In every substantive area in which it arbitrated, the Missouri commission left key terms unresolved. Listed below are examples of specific unresolved issues, the absence of which preclude MCImetro from obtaining a valid interconnection agreement:

**Price Schedule (Attachment I)**

- whether SWB may charge MCImetro for items not specified in the interconnection agreement (1.3)
- whether SWB may impose on MCImetro any non-recurring charge that is not provided for in the interconnection agreement (5.2)

### **Local Resale (Attachment II)**

- what date restrictions SWB may place on resale of promotions (2.8.1)
- whether SWB must coordinate the disconnection of a subscriber's calling cards with MCImetro to ensure that there is no disruption in a customer's calling card service (3.5.1)
- whether SWB must provide reports to MCImetro regarding the provision of directory service requests so that MCImetro can ensure these orders are being processed accurately and in a timely fashion (5.1.4.2.2.7 et seq.)
- whether SWB must provide the ability to electronically query its listing system so that MCImetro can provide competitive directory assistance service to its subscribers (5.1.4.2.2.8)
- whether MCImetro will have the ability to review and correct its subscriber directory listings to ensure they are accurate (5.1.6.9)

### **Network Elements (Attachment III)**

- whether SWB must provide performance measurements so that MCImetro can determine whether it is being provided access to elements at parity, and what procedure the parties will follow to correct any deficiencies identified (3.3.1)
- whether, if SWB provides elements on a priority basis to others, it must also provide them on a priority basis to MCImetro (3.4)
- whether SWB must cooperate in testing the provision of unbundled loops so that MCImetro can ensure proper technical performance, and how those tests will be conducted (4.5.1)
- whether SWB is required to switch a subscriber from SWB to MCImetro without disconnecting the features to which the customer subscribes (6.2.1.4)
- whether SWB must repair any component that is adversely affecting MCImetro's use of unbundled local switching and therefore adversely affecting MCImetro's customers (6.2.1.6)
- whether SWB must maintain and provide data to MCImetro sufficient to allow MCImetro to determine that MCImetro's subscribers are receiving parity in installation and maintenance and service (6.2.1.14)
- whether SWB must provide coin phone signaling so that MCImetro can provide coin

phone service (6.3.3.2)

- whether SWB must meet performance standards related to LIDB queries (13.4.8.18)

#### **Interconnection (Attachment IV)**

- what provisioning interval for interconnection trunks is required (1.6.3.3)
- whether SWB must provide common channel signaling (CCS) in conjunction with all trunk groups supporting local, transit, and toll traffic (3.2)
- whether SWB must provide a performance report detailing busy line verify/emergency interrupt so that MCImetro can determine whether its customers are receiving this service on a nondiscriminatory basis (6.1.3.1)
- how SWB and MCImetro should be compensated for their joint termination of wireless telephone traffic (6.3)
- under what circumstances may SWB withhold compensation from MCImetro for the joint termination of wireless traffic (6.3.4)
- what information SWB must provide to MCImetro regarding joint termination of wireless traffic (6.3.5)
- whether SWB must provide parity in accepting wireless telephone terminating traffic from MCImetro (6.3.8)

#### **Collocation (Attachment V)**

- whether MCImetro may perform environmental site inspections of SWB facilities prior to choosing to collocate at that facility (2.1.4)
- whether SWB must provide intraoffice facilities (e.g. DSO, DS1, DS3, OC3, OC12, OC48, and STS-1 terminations) in order to meet MCImetro's need for installation of equipment, interconnection, and/or provision of service (2.2)
- what conditions may be imposed on MCImetro's ability to access its equipment located at collocation facilities (2.3)
- whether MCImetro may interconnect directly its network with that of another collocating carrier at SWB's premises (2.5)
- how much notice must SWB give MCImetro before SWB or its subcontractors perform work in the collocation space (2.13)

- whether MCImetro is entitled to performance credits or compensation for any delays in the negotiated completion and turnover dates which create expenditures or delays to MCImetro (2.20)
- whether SWB must provide real time access to performance monitoring and alarm data that impacts MCImetro traffic (2.22.3.3)

#### **Rights of Way (Attachment VI)**

- whether MCImetro may withdraw its application for access to SWB's poles, ducts, conduits, or rights-of-way if it receives unacceptable environmental, health, and safety information from SWB (10.06)
- who shall be responsible for maintaining SWB's facilities and who shall bear the cost of doing so (12.06)
- whether SWB may charge MCImetro any fee if MCImetro withdraws its application before SWB responds to grant or deny the application or if MCImetro withdraws its application due to environmental problems or high make ready or modification costs (A.2.b; B.2.f)
- whether SWB may charge MCImetro more than the semiannual full duct conduit occupancy fee if two or more facilities occupy a duct, regardless of whether the duct has been subdivided (B.2.c)

#### **Number Portability (Attachment VII)**

- what responsibility SWB has for maintaining Line Information Database (LIDB) records for ported subscribers, and who is entitled to receive revenue for LIDB look-up (2.5.4)
- what responsibility SWB has to ensure that ported subscribers do not lose IXC service when they transition between local exchange carriers (2.5.6)
- what terms and conditions are necessary to minimize service outage for subscribers during the cut-over process and to predefine cut-over time frames (4.2)
- what installation intervals for RCF INP business and residential lines are required (4.3)
- what responsibility SWB has to coordinate the disconnection of subscribers' calling cards with MCImetro to ensure that there is no time that a subscriber is without a card (4.8.1.3.1)



- whether SWB must provide MCImetro access to the system file linking the subscriber's address to the central office serving the subscriber so that MCImetro can bill subscribers at appropriate rates (4.8.1.3.3)

#### **Business Process Requirements (Attachment VIII)**

- what procedures are required to ensure efficient resolution of service problems and disputes (1.1.2.1; 6.6.10)
- whether SWB must allow MCImetro to conduct timely market testing of new retail services (1.2.1)
- what training should be given to SWB employees who will communicate with MCImetro subscribers on behalf of MCImetro (1.2.6.1)
- whether SWB must train MCImetro employees on SWB systems and processes using the same information provided to SWB employees (1.2.6.1)
- whether customer payment history is customer proprietary network information (CPNI) under section 222 of the Act and whether customers have the right to authorize release of that information (2.1.3.1)
- what procedures MCImetro must follow to obtain subscriber profile information from SWB (2.3.2.3)
- whether SWB must inform MCImetro of available and newly added services, features, and functions, including promotions (2.3.2.4; 2.3.2.5; 2.3.3.1)
- whether SWB must provide engineering information to MCImetro regarding network elements (2.3.3.2)
- whether SWB must provide to MCImetro advance information of the details of upcoming implementation of new NPAs (2.3.3.3)
- whether MCImetro may carry intraLATA 1+ traffic for MCImetro local customers (3.1.3.1)
- whether SWB must provide unbranded intercept service on resale (3.2.4.1)
- what ordering intervals, service order procedures, and service order performance measures are required (3.5.2)
- what quality measurements SWB must meet in provisioning service and whether SWB must provide to MCImetro reports on the level of service actually delivered (3.5.3)

- what subscriber usage data must be provided by SWB to MCImetro and how MCImetro is to be compensated for lost usage data and recording failures (5)
- whether SWB must provide to MCImetro routine scheduled maintenance for resold services and unbundled elements at the same level of quality it provides to itself (6.2.3)
- what performance standards must SWB meet in responding to network outages (6.13.1)
- what terms and conditions apply to 911 services (7.1.2.2)

#### **Security Requirements (Attachment IX)**

- whether SWB must provide MCImetro with the same fraud prevention features SWB provides itself so that MCImetro can prevent abuse and fraud (3.1)
- which party should be responsible for uncollectible or unbillable revenues resulting from signal network routing errors caused by a party to the agreement, from alterations to the software underlying unbundled network elements, or from the unauthorized use of the service provider network (3.1 - 3.4)

#### **Credits for Performance Standards Failures (Attachment X)**

- whether SWB must comply with performance standards so that MCImetro can ensure it is getting reasonable service at parity (1.1)
- whether performance credits, including delay credits, performance failure credits, and subscriber usage credits will be available if performance standards are not met (1.2 - 1.5)
- whether SWB can prevent MCImetro from obtaining a different service to replace service for which a credit is due (1.6)
- how credits will be paid (1.7)
- how often performance will be measured (1.7)
- what the specific performance credits should be for each category (Sections 3 - 5)

#### **Bona Fide Request Process (Attachment XI)**

- how the costs of developing new network elements or network element combinations should be apportioned (8)

Although MCI requested that the MPSC set a deadline by which further negotiations be concluded and a final interconnection agreement be submitted for approval, the MPSC failed to establish such a deadline, even though it had done so in other arbitration proceedings. *Morris Aff.* ¶ 12. As to a substantial number of crucial issues, therefore, the MPSC left MCI with the sole option of conducting further open-ended negotiations with an intransigent incumbent monopolist that had already demonstrated its unwillingness to cooperate.

MCI's second attempt at negotiation with SWB proved as futile as its first. In January 1997, MCI proposed to SWB that the parties set a negotiation schedule and work from an interconnection agreement previously negotiated between the two parties in Texas. *Morris Aff.* ¶ 15. SWB refused to work from that agreement, and even refused to set a schedule and agenda for negotiations. *Id.* When MCI advised the MPSC of SWB's dilatory tactics and requested that the MPSC set a March 14, 1997 deadline for filing final agreement, *id.* ¶ 15, the MPSC again declined to act. *Id.* ¶ 17. Although negotiations eventually commenced in February 1997, those talks made little progress because SWB refused to make available its employees for the negotiation and asserted that it was not prepared to examine and comment upon MCI's proposals for several weeks. *Id.* ¶ 19. MCI again sought relief from the MPSC, proposing that the parties set an April 19, 1997 deadline at which time MCI would include in any proposed interconnection agreement all opposing contract language for the MPSC to resolve at that time. *Id.* ¶ 20. SWB refused to accede to this process and the MPSC did not set such a deadline. Sporadic negotiations continued throughout the spring and although MCI discussed its proposals for each and every section of

the interconnection agreement, SWB refused to resolve or even discuss many of those sections. Id. ¶ 21. MCI repeatedly renewed its request that the MPSC establish a deadline for submission of an agreement. Id. ¶ 22. On April 3, 1997, the Missouri Office of Public Counsel joined MCI in requesting that the MPSC intervene to resolve the impasse between SWB and MCI. Id.

Having determined that further negotiation was futile, on June 16, 1997, MCI filed a proposed interconnection agreement with the MPSC including the negotiated and arbitrated terms and identifying provisions on which the parties have been unable to reach agreement. Morris Aff. ¶ 23. The agreement included disputed language for which there were neither negotiated nor arbitrated terms. SWB did not sign the agreement and has filed a motion to strike. Id. ¶ 24. More than 30 days have passed, and the MPSC has taken no action respecting this proposed agreement.

**III. This Commission Must Assume Jurisdiction Over These Proceedings Because The Missouri Public Service Commission Has Failed to Complete Its Statutory Duties in a Timely Manner.**

By failing to resolve the host of issues respecting critical terms and conditions within the nine month statutory period and failing to produce a functioning interconnection agreement in a timely manner, § 252(b)(4)(C), the MPSC "failed to act" within the meaning of the 1996 Act. Although the statutory deadline has long since passed and the MPSC's Arbitration Order was issued over six months ago, the parties have not been able to reach agreement on the remaining unresolved issues. Negotiations with SWB have been unsuccessful and the MPSC has not resolved these remaining issues as MCI requested in

June.<sup>2</sup> Despite repeated requests, the MPSC has refused even to establish a deadline by which the parties must submit a final interconnection agreement for approval pursuant to § 252(e)(1). Moreover, although the MPSC was to replace the interim rates established in the Arbitration Order with permanent rates by June 30, 1997, the MPSC has failed to do so. Morris Aff. ¶ 26.

Because the MPSC has failed to meet its responsibility to resolve all issues before it in arbitration -- including disputes over critical terms and conditions -- there can be no final interconnection agreement. With no agreement in place and no possibility of reaching agreement in sight, MCI cannot compete in the Missouri local market. This is manifestly against the intent of Congress. The Commission should therefore assume the responsibility that the MPSC failed to exercise.

---

<sup>2</sup>AT&T has also been unable to reach agreement with SWB and has also requested that Commission decide open issues and approve an agreement. That request was filed in April 1997 and has not been acted on by the MPSC. Morris Aff. ¶ 25.

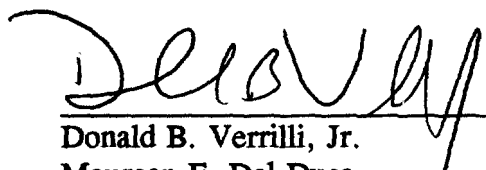
## **REQUEST FOR RELIEF**

For all the foregoing reasons, MCI requests that the Commission assume jurisdiction over this proceeding pursuant to Section 252(e)(5).

Respectfully submitted,

MCI Telecommunications Corporation

Lisa B. Smith  
Kecia Boney  
MCI Telecommunications Corp.  
1801 Pennsylvania Ave., N.W.  
Washington, D.C. 20006  
202-887-2992



Donald B. Verrilli, Jr.  
Maureen F. Del Duca  
Jodie L. Kelley  
Douglas H. Hsiao  
Michelle B. Goodman  
JENNER & BLOCK  
601 13th Street, N.W.  
Washington, D.C. 20005  
202-639-6000

Its Attorneys

## **CERTIFICATE OF SERVICE**

I, Jodie L. Kelley, do hereby certify that copies of the foregoing "Petition of MCI for Preemption Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996" were served via hand delivery to the following on July 18, 1997.

ITS

Federal Communications Commission  
1919 M Street, N.W. Room 140  
Washington, D.C. 20554

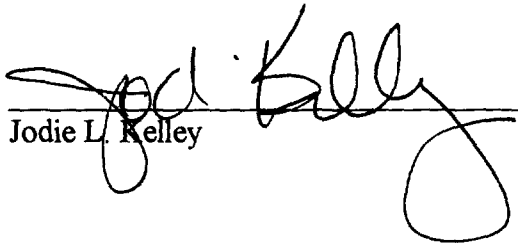
Richard K. Welch, Chief  
Policy and Program Planning Division  
Federal Communications Commission  
1919 M Street, N.W. Room 544  
Washington, D.C. 20554

Paul G. Lane  
Diana J. Harter  
Leo Bub  
Southwestern Bell Telephone Co.  
100 N. Tucker Blvd., Room 630  
St. Louis, MO 63101

Paul DeFord  
Lathrop & Gage  
2345 Grand Blvd.  
Kansas City, Missouri 64108-2684  
(Counsel for AT&T)

Michael F. Dandino  
Senior Public Counsel  
Office of Public Counsel  
P.O. Box 7800  
Jefferson City, MO 65102

Cecil Wright  
Executive Secretary  
Missouri Public Service Commission  
Truman State Office Building  
5th Floor  
301 W. High Street  
Jefferson City, MO 65101-1517

  
Jodie L. Kelley



**RECEIVED**

**JUL 18 1997**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

In the Matter of )  
 )  
Petition of MCI for )  
Preemption Pursuant )  
to Section 252(e)(5) )  
of the Telecommunications )  
Act of 1996 )

**AFFIDAVIT OF STEPHEN F. MORRIS**

I, Stephen F. Morris, first being duly sworn state upon my oath that I am sound of mind, over the age of 21 years, and have personal knowledge of the following facts:

1. I am an employee of MCI Communications Corporation in the position of Senior Attorney. I am responsible for regulatory matters in Arkansas, Kansas, Missouri, and Oklahoma. My duties germane to this proceeding included participating in pre-arbitration mediation, managing and litigating the arbitration proceeding, and participating in discussions regarding and negotiating the post-arbitration contract, all as described more fully herein below.
2. On March 26, 1996, MCI Telecommunications Corporation, MCImetro Access Transmission Services, Inc., and their affiliates (hereinafter collectively "MCI"), sent their formal request for interconnection under section 101 of the Telecommunications Act of 1996 (47 U.S.C. 251 *et seq.*) to Southwestern Bell Telephone Company (hereinafter "SWB") regarding the five states in which SWB provides local exchange telecommunications services, including the State of Missouri. A copy of the interconnection request is submitted herewith as Exhibit A.
3. Between March, 1996, and August, 1996, MCI attempted to commence negotiations with SWB regarding an interconnection agreement. SWB prevented negotiations from occurring during this period because it refused to agree to the appropriate terms and conditions of a preliminary non-disclosure agreement.
4. On August 16, 1996, MCI timely filed with the Missouri Public Service Commission (hereinafter "MPSC") its Petition for Arbitration pursuant to 47 U.S.C. § 252(b) to establish an interconnection agreement with SWB for the State of Missouri. A copy of the Petition is submitted herewith as Exhibit B. AT&T of the Southwest, Inc. (hereinafter "AT&T") filed a similar petition for arbitration which the MPSC consolidated with MCI's Petition for Arbitration.
5. The petition incorporated a lengthy and detailed term sheet which described MCI's requirements for an interconnection agreement with SWB (Attachment 2 to the Petition). MCI's petition clearly stated that the term sheet items were submitted for arbitration.